STATUTORY INSTRUMENTS

1977 No. 933

HARBOURS, DOCKS, PIERS AND FERRIES

The Ardrossan Harbour Revision Order 1977

Made - - -	*9th February* 1977
Laid before Parliament	*22nd March* 1977
Coming into Operation	*10th May* 1977

The Secretary of State for Transport, in exercise of the powers conferred by section 14 of the Harbours Act 1964(a) and now vested in him(b) and of all other powers enabling him in that behalf and on the application of the Ardrossan Harbour Company Limited, hereby makes the following Order:—

PART I

PRELIMINARY

Citation and commencement

1.—(1) This Order may be cited as the Ardrossan Harbour Revision Order 1977 and shall come into operation on the date fixed in accordance with the provisions of the Statutory Orders (Special Procedure) Acts 1945 and 1965(c).

(2) The Ardrossan Harbour Acts and Orders 1864 to 1931 and this Order may be cited together as the Ardrossan Harbour Acts and Orders 1864 to 1977.

Incorporation of Acts

2.—(1) The following enactments, so far as the same are applicable to the purposes and are not inconsistent with the provisions of this Order, are hereby incorporated with this Order, namely:—

(*a*) the Companies Clauses Act (except sections 59 to 63, which relate to the conversion of borrowed money into capital, and sections 147, 148, 165 and 166):

Provided that as so incorporated—

(i) section 16 of the Act shall have effect as if for the words "on demand" there were substituted the words "within two months after delivery thereof";

(a) 1964 c. 40.
(b) S.I. 1970/1681 (1970 III, p. 5551).
(c) 9 & 10 Geo. 6, c. 18; 1965 c. 43.

(ii) section 101 of the Act shall have effect as if after the words "shall be signed by the chairman of such meeting" there were inserted the words "or of the next succeeding meeting";

(*b*) the Companies Clauses Act 1863(a) (except the provisions of section 13 which limit the rate of dividend on preference capital, sections 17 to 21, and Part IV thereof):

Provided that in that Act as so incorporated—

(i) section 14 shall have effect as if after the words "each year" there were inserted the words "or out of the unappropriated profits from previous years or partly out of one and partly out of the other" and as if before the words "profits available" there were inserted the word "such";

(ii) section 22 shall have effect as if the words "and to the same amount as" were omitted therefrom;

(iii) section 25 shall have effect as if the words "or the sum of ten thousand pounds whichever of the last two mentioned sums is the smaller sum" were omitted therefrom; and

(iv) section 31 shall have effect as if after the words "other than" there were inserted the words "in the case of holders of perpetual debenture stock".

(2) In the construction of the enactments so incorporated with this Order the expression "Special Act" shall be read as a reference to this Order and the expression "company" shall mean the Company.

Interpretation

3.—(1) The Interpretation Act 1889(b) shall apply for the interpretation of this Order as it applies for the interpretation of an Act of Parliament.

(2) In this Order, unless the context otherwise requires—

"the Company" means the Ardrossan Harbour Company Limited;

"the Companies Clauses Act" means the Companies Clauses Consolidation (Scotland) Act 1845(c);

"enactment" means any Act, or any order, scheme or other instrument made thereunder, and any provision in any Act or in any such order, scheme or instrument;

"share" means share in the capital of the Company and includes stock except where a distinction between stock and share is expressed or implied, and "share capital" and "shareholder" shall be construed accordingly;

"the undertaking" means the undertaking of the Company as from time to time authorised by any enactment.

(3) Except where the context otherwise requires, any reference in this Order to any enactment shall be construed as a reference to that enactment as applied, extended, amended or varied by or by virtue of any subsequent enactment, including this Order.

(a) 1863 c. 118. (b) 1889 c. 63. (c) 1845 c. 17.

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The Ardrossan Harbour Revision Order 1977

CORRECTION

Page 5, article 14, line 2
for 197
read 1977

June 1977
LONDON: HER MAJESTY'S STATIONERY OFFICE

PART II

FINANCE

Additional capital

4.—(1) The Company may from time to time raise additional capital by the creation and issue of ordinary shares or stock or of preference shares or stock or by any combination of those modes.

(2) It shall not be lawful for the Company to create and issue under the powers of this Article any greater nominal amount of share capital than shall be sufficient to produce, including any premiums and allowing for any discounts which may be obtained or allowed on the issue thereof, seven hundred thousand pounds.

Additional share capital to be part of general capital

5. The additional share capital authorised by Article 4 (Additional capital) of this Order shall form part of the general share capital of the Company and save as is otherwise expressly provided by the terms of issue thereof the holders thereof respectively in proportion to the number or amount of their shares or stock shall be subject and entitled to the same powers, provisions, liabilities, rights, privileges and incidents in all respects as holders of share capital of the Company of the same class or description.

Issue of new share capital

6. Any share capital issued under this Order may, subject to the terms of the resolution by which it was created, be issued at such times, to such persons, on such terms and conditions and in such manner as the directors of the Company think advantageous to the Company.

Minimum holdings of stock

7.—(1) All ordinary and preference stock of the Company shall be issued and be held in amounts of ten pounds or of a multiple of ten pounds and not otherwise and the Company shall not be under any obligation to register a transfer of any ordinary or preference stock which would make the holding, if any, of the transferor or transferee an amount other than ten pounds or a multiple of ten pounds of ordinary or preference stock.

(2) Notice of the effect of this Article so far as applicable shall be endorsed on all certificates of ordinary and preference stock of the Company as the case may be.

Power to borrow

8.—(1) In addition to any moneys which the Company are authorised to borrow immediately before the coming into operation of this Order the Company may without obtaining a certificate of a Sheriff under section 42 of the Companies Clauses Act raise for the purposes of the undertaking, either by borrowing on mortgage of the undertaking or by the creation and issue of debenture stock or partly by one and partly by the other of those modes, any sum or sums of money, not exceeding in the whole five hundred thousand pounds.

(2) The powers conferred by this Article are without prejudice to the right of the Company to re-borrow from time to time any amounts which, having been raised by borrowing on mortgage or by the creation and issue of redeemable debenture stock, are paid off.

Debenture stock

9.—(1) The Company may create and issue debenture stock subject to the provisions of Part III of the Companies Clauses Act 1863, as amended in its application to the Company, but notwithstanding anything therein contained the interest on all debenture stock created and issued by the Company immediately before the coming into operation of this Order or under this Order or any subsequent enactment shall, subject to the provisions of any subsequent enactment, rank *pari passu* (without respect to the dates of the securities or of the enactment or resolutions by which the debenture stock was authorised).

(2) Notice of the effect of this Article shall be endorsed on all certificates of debenture stock issued after the passing of this Order.

Minimum holdings of debenture stock

10.—(1) All debenture stock of the Company shall be issued and be held in amounts of one pound or of a multiple of one pound and not otherwise and the Company shall not be under any obligation to register a transfer of any debenture stock which would make the holding (if any) of the transferor or transferee an amount other than one pound or a multiple of one pound.

(2) Notice of the effect of this Article shall be endorsed on all certificates of debenture stock of the Company.

Company not bound to regard trusts

11. The Company shall not be bound to see to the execution of any trust whether express, implied or constructive to which any of their shares or debentures, debenture stock or mortgages may be subject and the provisions of section 21 of the Companies Clauses Act shall *mutatis mutandis* extend and apply to any shares, debentures, debenture stock or mortgages of the Company as if the same were shares to which that section applies.

Priority of mortgages and debenture stock over other debts

12. Without prejudice to the provisions of section 319 of the Companies Act 1948(**a**), all money to be raised by the Company on mortgage or by the creation and issue of debenture stock under the provisions of this Order shall have priority against the Company and the property from time to time of the Company over all other claims on account of any debts incurred or engagements entered into by them after the commencement of this Order:

Provided that this priority shall not affect any claim against the Company or their property in respect of any feu duty or ground annual payable by them or in respect of any rent or sum reserved by or payable under any lease granted or made to or vested in the Company which is entitled to rank in priority to or *pari passu* with the interest on their mortgages or debenture stock.

Appointment of judicial factor

13.—(1) The mortgagees of the Company may enforce payment of arrears of interest or principal and interest due on their mortgages by the appointment of a judicial factor. In order to authorise the appointment of a judicial factor in respect of arrears of principal the amount owing to the mortgagees by whom the application is made shall be not less than one-tenth of the amount for the time being borrowed by the Company.

(2) The powers of appointment of a receiver under Part II of the Companies (Floating Charges and Receivers) (Scotland) Act 1972(**b**), shall not be exercisable by mortgagees to whom arrears of principal owed by the Company amount to less than one-tenth of the amount for the time being borrowed by the Company.

(**a**) 1948 c. 38.

(**b**) 1972 c. 67.

Application of money

14. All money raised under the Ardrossan Harbour Acts and Orders 1864 to 197 , including premiums, shall be applied only to purposes to which capital is properly applicable and any sum of money which may arise by way of premium from the issue of share capital under the provisions of this Order shall not be considered as part of the capital of the Company entitled to dividend.

Redeemable preference shares and stock and debenture stock

15.—(1) In this Article unless the context otherwise requires—

"issue" includes re-issue;

"preference stock" includes preference shares;

"redeemable stock" means stock issued under the powers of this Article so as to be redeemable;

"redeemed stock" means any redeemable stock which has been redeemed and is available for issue under the provisions of this Article;

"stock" means preference stock and debenture stock.

(2) Subject to the provisions of this Article the directors of the Company may from time to time by virtue of this Order and without further or other sanction issue so as to be redeemable any stock created by the Company after the passing of this Order and any redeemed stock:

Provided that no redeemed stock shall be issued except for the purpose of effecting the redemption of redeemable stock under the provisions of this Article unless the issue is authorised by a resolution of a general meeting of the Company.

(3) Redeemable stock may be redeemed out of revenue or out of capital and such redemption may be effected by purchase as provided for in paragraph (7) (*b*) of this Article or by paying off the stock or by issuing to the holder of the stock other stock in substitution therefor and for the purpose of raising money to pay off or of providing stock in substitution for any redeemable stock the Company may create new stock or the directors may issue any redeemed stock so as to be redeemable or irredeemable as they may think fit:

Provided that—

(i) no new stock shall be created nor shall any redeemed stock be issued so as to make the total amount of any particular class of stock exceed the amount of stock of that particular class which the Company are for the time being authorised to create except during an interval of three months between the creation or (in the case of redeemed stock) the issue of the stock and completion of the redemption of the redeemable stock for the purpose of redeeming which the stock of such particular class is proposed to be so created or issued;

(ii) during such interval as aforesaid the amount raised by means of any stock so created or issued shall for the purpose of any enactment regulating the borrowing powers of the Company be deemed not to have been raised.

(4) The redemption of any preference stock issued so as to be redeemable shall not affect the validity of any mortgage or debenture stock if the grant or issue thereof by the Company was lawful in the circumstances existing at the date of grant or issue.

(5) Redeemable stock shall be redeemable at such time and in such manner and subject otherwise to such terms and conditions as the directors may before the issue thereof determine:

Provided that the terms and conditions of redemption upon which any redeemable stock is issued shall be stated in any offer by the Company of such stock for subscription and endorsed on the certificate of such stock and no term or condition of redemption which is not so stated and endorsed shall be binding upon the holder of the stock.

(6) Any discount allowed on the issue or any premium payable on the redemption of any redeemable stock may be written off out of revenue.

(7) (*a*) The Company may from time to time set aside out of revenue after providing for the payment of interest on any mortgages, debentures or debenture stock and for other fixed charges and obligations such sums as the Company consider proper for the purpose of redeeming any redeemable stock which under the terms of the issue thereof is redeemable wholly or partly in cash and the Company may invest any sums so set apart and the income thereof in any securities (not being securities of the Company).

(*b*) All sums so set aside shall be applied in or towards the redemption of any redeemable stock for the redemption of which they may have been so set aside or may, if the directors of the Company think fit, be at any time applied in the purchase of any such redeemable stock at a price not exceeding the redemption price.

Company may incur temporary loans

16. In addition to the powers to borrow money on mortgage of the undertaking, or to raise money by the creation and issue of debenture stock, conferred on the Company by Article 8 (Power to borrow) of this Order, the Company may, for the purposes of or in connection with the undertaking, borrow by way of temporary loans or overdrafts from banks or otherwise, any sums which they may temporarily require—

(*a*) for the purpose of defraying expenses pending the receipt of revenues receivable by them in respect of the period of account in which those expenses are chargeable:

Provided that the aggregate amount outstanding at any time of the moneys so borrowed shall not exceed two hundred and fifty thousand pounds; and

(*b*) for the purpose of defraying, pending the issue of shares of any description or the borrowing of money (such issue or borrowing being within the statutory powers of the Company at the time when the powers of this Article to borrow temporarily are exercised), expenses intended to be defrayed by means of such issue or borrowing, as the case may be.

PART III

ADMINISTRATIVE PROVISIONS

Ordinary meetings

17. Notwithstanding anything in the Companies Clauses Act the ordinary meetings of the Company shall be held once only in each year in such month as the directors may from time to time determine.

Notice of meetings

18. Notwithstanding anything in the Companies Clauses Act notice of all meetings of the Company whether ordinary or extraordinary may (if the directors so determine) be given by letter sent by ordinary letter post to each shareholder instead of by public advertisement:

Provided that the letters giving the notice shall be directed according to the registered address or other known address of each shareholder prepaid and posted not later than twenty-one clear days before the date of the meeting. In proving that any such notice has been given it shall be sufficient to prove that the letter containing the notice was properly addressed and put into the post office as a prepaid letter not later than the time hereby prescribed.

Proof of majority of votes

19. At any meeting of the Company a majority of votes shall only be required to be proved if a poll be demanded at the meeting and if a poll be not demanded at the meeting then a declaration by the chairman that the resolution has been carried and an entry to that effect in the book of proceedings of the Company shall be sufficient and conclusive evidence of the fact without proof of the number or proportion of votes recorded in favour of or against the resolution.

Appointment of proxies

20. Notwithstanding anything in the Companies Clauses Act the attorney of any shareholder duly authorised in writing may appoint a proxy to vote for and on behalf of the shareholder and for that purpose may execute on behalf of the shareholder the necessary form of proxy:

Provided that the instrument appointing the attorney, or if it has been registered in the Books of the Lords of Council and Session an Extract Registered copy thereof, shall be transmitted to the secretary at the same time as the instrument appointing the proxy.

Register of shareholders and shareholders' address book

21. Notwithstanding anything in the Companies Clauses Act it shall not be obligatory upon the Company—

(*a*) to keep separately a register of shareholders and a shareholders' address book if in lieu thereof the Company keep one register only containing such particulars as are required by the said Act to be entered in the register of shareholders and the shareholders' address book respectively; or

(*b*) to authenticate by the affixing of their common seal or otherwise the register of shareholders or any register which the Company may keep in lieu thereof under the powers of this section.

Affixing of signatures to certificates by mechanical means

22. The directors may either generally or in any particular case determine that the signature of a director or the secretary may be affixed by some mechanical device to be specified by the directors to any certificates for stock, shares, debentures, debenture stock or any other security which is required to be issued under the common seal and to bear the autographic signature of one or more directors or the secretary.

PART IV

MISCELLANEOUS

Amendment

23. Section 15 (First ordinary meeting and quorum) of the Ardrossan Harbour (Sale and Transfer) Act 1886(a) is hereby amended by the substitution for the word "seven" of the word "four".

Repeals

24. The following enactments are hereby repealed:—

Ardrossan Harbour (Sale and Transfer) Act 1886	Section 12 (Debenture stock).
Ardrossan Harbour Act 1892(b)	The whole Act.
Ardrossan Harbour Order Confirmation Act 1931(c)	The whole Act.

Costs of Order

25. All costs, charges and expenses preliminary to and of and incidental to the preparing, applying for, obtaining and passing of this Order or otherwise in relation thereto shall be paid by the Company.

William Rodgers,
Secretary of State for Transport.

9th February 1977.

EXPLANATORY NOTE

(This Note is not part of the Order.)

This Order:—

(1) incorporates with amendments certain of the provisions of the Companies Clauses Consolidation (Scotland) Act 1845 and of the Companies Clauses Act 1863;

(2) empowers the Company to raise additional capital;

(3) increases the borrowing powers of the Company, provides for the creation of debenture stock and empowers the Company to incur temporary loans;

(4) makes miscellaneous administrative provisions in relation to the Company; and

(5) provides for the amendment and repeal of various enactments relating to the Company.

(a) 1886 c. xxxvi. (b) 1892 c. xxi. (c) 1931 c. cx.

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